

STANDARD TERMS AND CONDITIONS
CITY OF DELTONA PURCHASE ORDER

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS,
WHICH MAY NOT BE CHANGED EXCEPT AS EXPRESSLY AGREED IN
WRITING
SIGNED BY BUYER.

SHIPPING AND BILLING INSTRUCTIONS

1. Unless otherwise specified on the face of this Purchase Order or Visa Order all deliveries are for "inside delivery."
2. Seller shall notify Buyer of deliveries that require special handling and/or assistance for off-loading. Failure to notify Buyer concerning this type of delivery will result in billing to Seller of any resulting re-delivery, storage, or handling charges.
3. Transportation Charges on all shipments must be fully prepaid by Seller. All shipments are FOB Destination, title transfer will take place at delivery site. If Purchase Order authorizes addition of freight to invoice, Seller must attach a copy of the prepaid Freight Bill when rendering invoice. C.O.D. shipments will not be accepted.
4. If Purchase Order authorizes addition of freight to Invoice, Seller is expected to make complete shipments in accordance with Purchase Order schedule. Any increase in freight cost resulting from unauthorized split shipments will be born by Seller.
5. Unless otherwise specified on the face of this Purchase Order all deliveries are to be made during the hours 8:00 a.m. to 4:00 p.m. Monday thru Friday, excluding holidays.
6. All shipments must be accompanied by a Packing List containing: the Seller's Packing List Number, the Buyer's Purchase Order Number or Visa account number and an itemized description of items shipped.
7. When multiple shipments are required to complete this order the final shipment must be so indicated on the Seller's Packing List and Invoice.
8. Seller shall render separate Invoices for each Purchase Order or Visa Order and each delivery. All Invoices in addition to containing the Purchase Order Number or Visa Account Number should refer to the Seller's Packing List Number.

9. Invoices shall specify cash discounts. The payment period shall be calculated from the date acceptable Invoices are received or the date goods are received, whichever last occurs. Penalties will not be paid.

10. Cities are exempt from federal excise tax, transportation tax and state sales tax. Do not include these taxes in your invoice. Exemption Certificate will be signed upon request.

11. Invoice or Invoices will not be paid until all item(s) on this Purchase Order are received in full, unless prior approval for partial payment has been made and is indicated on the face of this Purchase Order.

12. Seller shall mail Invoice to: City of Deltona, Finance Department, 2345 Providence Blvd., Deltona, FL 32725

Exhibit 2

CONDITIONS

1. **PRICE.** Unless otherwise specified, prices shall be F.O.B. delivery point; shall be invoiced as specified herein, and shall include all customs duties and applicable taxes. If price is not stated in this Order, Seller agrees that goods or services shall be billed at price last quoted, or billed at prevailing market price, whichever is lower. Payment will be made only in accordance with this Order.

2. **QUANTITY.** The specific quantity ordered must be delivered in full and not be changed without the Buyer's consent in writing. Any unauthorized quantity received is subject to Buyer's rejection and return at Seller's expense. No allowances for trade practices will be accepted unless expressly agreed to by Buyer in writing.

3. **PACKING.** Seller will pay all charges for containers, crating, boxing, bundling or dunnage, unless stated herein. The Seller agrees to assume and pay all extra expense accruing because of improper packing.

4. **DELIVERY.** Time is of the essence of this contract. Seller is hereby advised that Buyer may become liable to others if Seller fails to deliver goods and services of the quality and quantity specified herein, at the times specified herein. In addition to its other remedies for Seller's failure to make sufficient progress in the work to endanger timely delivery, Buyer may require Seller to ship the goods by any means of transportation Buyer specifies and any additional costs for such transportation services shall be paid by Seller. In addition to its other remedies for Seller's failure to deliver on time, Buyer may refuse to accept and pay for any late delivery of any goods or services. Seller shall bear the risk of loss or damage for all goods until actual receipt and acceptance thereof by Buyer. Goods shall be delivered free of all liens of third parties. Seller waives all rights in liens in any property arising from its performance under this order.

5. **ASSIGNMENT.** Seller shall not delegate, sublet or subcontract any duties nor assign any rights or claims under this Purchase Order without the prior express written consent of the

Buyer. Failure to comply with the provisions in this paragraph shall affect, at the option of the Buyer, a cancellation of the Buyer's obligations hereunder.

6a. **TERMINATION FOR CONVENIENCE.** Buyer shall have the right at any time to terminate or to suspend this contract, in whole or in part for Buyer's convenience, by mailing written notice to Seller. In the event of such termination or suspension Buyer will make an equitable payment to Seller provided that Seller is not then delinquent in its performance to Buyer. In no event will such payment exceed the total price herein. Buyer may terminate or suspend this contract for its convenience whether or not its contract has been terminated or suspended by others.

6b. **TERMINATION FOR DEFAULT.** Buyer may by written notice of default, mailed to Seller, terminate this contract in whole or in part (1) immediately for failure of Seller to deliver the goods or to supply the services within the time specified herein; (2) for failure of Seller to perform any of the provisions of this contract; or for failure of Seller to make sufficient progress in the work for this Order so as to endanger in Buyer's opinion the timely and proper performance of Buyer's contractual obligations to others; (3) because of defects in supplies, workmanship or quality, or because services or products furnished are not in accordance with approved samples of specifications issued in connection herewith, or if performance by Seller is prevented by causes beyond Seller's control, or if Seller fails to comply with the other terms and conditions of this order, or if Seller is bankrupt, insolvent or has a receiver appointed for it; however, under (2) above termination shall occur only after Seller's failure to cure such default within seven days after receipt by Seller of such notice.

7. **REJECTION.** Buyer shall have a reasonable period of time after receipt to inspect goods and services supplied and to reject (in whole or in part), or to retain (in whole or in part) subject to a claim for damages, such goods and services as are in its judgement defective. Goods so rejected and goods supplied in excess of quantities specified herein may be returned at Seller's risk and expense for credit or replacement at Buyer's option, and all handling and transportation expenses both ways shall be assumed by Seller. Payment for, or use of, any or all of the goods or services supplied hereunder shall not constitute acceptance or waiver of defects by the Buyer. Nothing in this paragraph shall in any way limit Buyer's rights under paragraph 9 (warranty) hereof.

8. **PATENTS.** Seller warrants that the use or sale of any of the goods supplied hereunder will not infringe any patents, United States or Foreign. Seller agrees to defend, protect and save harmless Buyer, its successors, assigns, customers and users of its products, against all suits at law or in equity, and from all damages, expenses, claims and demands for actual or alleged infringement of any patent by reason of the sale or use of the goods supplied hereunder or any part thereof.

9. **WARRANTY.** Seller warrants that all material, equipment and services furnished hereunder will conform to specifications, drawings, samples, or other description furnished or approved by Buyer; will be fit and sufficient for the purposes intended; will perform as specified herein; will be free from defects and merchantable. This warranty will run to Buyer, its successors and assigns, and to the Buyer's customers and users of the Buyer's products.

Seller shall be liable to Buyer for all damages and expenses resulting from Seller's failure to make timely delivery of goods and services of the quantity and quality specified, whether or not Buyer rejects such goods and services, in whole or in part, or terminates this contract.

10. **CHANGES.** Buyer reserves the right at any time to change this Order in any particular with respect to the goods and/or services not theretofore shipped thereunder. If any such change shall increase Seller's cost of performance, Seller shall immediately notify Buyer thereof and an equitable adjustment in the price shall be made by written amendment to the Purchase Order.

This is the entire agreement between Buyer and Seller as respects items covered hereby and all modifications must be in writing. Reference in this order to Seller's quotation does not imply acceptance of any terms and conditions in such quotation. Any terms and conditions in such quotation which are in addition to or inconsistent with the terms and conditions contained in this order shall not be part of this agreement.

An acknowledgment which contains terms in addition to or inconsistent with the terms of this Order, or a rejection of any term of this Order, shall be deemed to be a counter offer to Buyer and shall not be binding upon Buyer unless acceptance thereof is made in writing to the Seller. However, performance by Seller, in the absence of written acceptance of such counter offer by Buyer, shall be deemed to be performance in accordance with the terms of this Purchase Order.

11. **LAW.** This agreement is to be construed as though made in and to be performed in the State of Florida and is to be governed by the laws of Florida in all respects without reference to the laws of any other state or nation.

12. **INDEMNIFICATION AND CERTIFICATIONS.** If any work or services to be supplied hereunder are performed by Seller on Buyer's premises or on the premises of others for whom Buyer is performing services, Seller will indemnify and save harmless Buyer against any loss, damage or expense by reason of injuries to persons (including death) or damage to property arising out of the use of said premises by Seller, its agents, representatives, contractors, subcontractors or employees. Upon request Seller will furnish Certificate of Insurance showing coverage satisfactory to Buyer for workmen's compensation, public liability and property damage. Seller will also furnish, if requested sworn statements and waivers of lien with respect to, or arising out of goods and services supplied hereunder in form satisfactory to Buyer.

13. **REMEDIES.** The remedies herein reserved to Buyer shall be cumulative, and in addition to any remedies provided by law. No waiver of a breach of any provision shall constitute a waiver of any other breach, or of such provision.

14. **FABRICATION.** Unless specific delivery dates are provided in this Purchase Order, Seller shall not fabricate any of the supplies, covered by this Purchase Order, or procure any of the materials required in their fabrication, except to the extent authorized in written instructions forwarded to Seller by Buyer. Buyer shall have no responsibility for materials

for which written fabrication and/or delivery instructions have not been provided. Buyer may from time to time change shipping schedules specified in this Purchase Order or contained in such written instructions, or direct temporary suspension of such scheduled shipments.

15. **REPAIRS.** Defective items at option of Buyer and upon notice to Seller will be repaired by Buyer or returned to Seller for repair, in either case, at Seller's risk and expense. Items which are rejected and returned are not to be replaced without the prior written permission of the Buyer. In the event that return of the equipment to Seller is not practical, Seller will at Buyer's request, make repairs at Buyer's location.

16. **BAILMENTS.** Any material furnished by Buyer (and not sold to Seller) in conjunction with this order shall be deemed as held by Seller as a Bailee and Seller agrees to keep the same fully insured for the benefit of Buyer and to pay for all such material spoiled by it or not otherwise satisfactorily accounted for.

17. **RIGHT OF SET-OFF.** Buyer shall be entitled at any time to set off any sums owing by Seller to Buyer against sums payable by Buyer in connection with this Purchase Order.

18. **GENERAL.** Shipment of any part of the goods or services to be supplied hereunder shall constitute acceptance of this Purchase Order and its terms and conditions. In the event of any inconsistency between the terms of this Order and Seller's acceptance, the terms of this Order shall govern. No portion of this contract may be modified or waived unless Buyer expressly consents in writing to each such change. No omission by Buyer to enforce any provision of this contract shall constitute a waiver of its rights to enforce any provision thereafter.

19. **ATTORNEY'S FEE.** Whenever Buyer or Seller shall breach or fail to perform any of the conditions or provisions of this Purchase Order, and such failure or breach shall cause either party to incur any damages or expenses whatsoever, such damages or expenses so incurred, with legal interest, and including penalties, costs, and reasonable attorney's fees as hereinafter described in this paragraph, may be added to or deducted from the next accruing payments due as may be judicially determined. "Reasonable attorney's fees" shall be deemed to include fees at the pretrial, trial and appellate levels, in addition to costs of suit or arbitration.

